

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANNE E. SCHEURER,

Plaintiff,

v.

FROMM FAMILY FOODS LLC,

Defendant.

ORDER

15-cv-770-jdp

This is an employment discrimination case. Defendant Fromm Family Foods LLC, moved to compel arbitration under the Federal Arbitration Act (FAA), relying on an arbitration agreement between plaintiff and an employment agency. Dkt. 14. The court denied Fromm's motion, Dkt. 25, a decision immediately appealable under 9 U.S.C. § 16(a)(1). Fromm has appealed, Dkt. 26, and now moves to stay district court proceedings pending appeal. Dkt. 29.¹ Scheuer does not oppose Fromm's motion. Dkt. 34.

A notice of appeal under 9 U.S.C. § 16 halts lower court proceedings unless the appeal is frivolous. *Bradford-Scott Data Corp. v. Physician Computer Network, Inc.*, 128 F.3d 504, 505-06 (7th Cir. 1997). If the appeal is frivolous, then a district court can deny stay in the district court's proceedings. Otherwise, the district court must stay its proceedings. "An appeal is frivolous when the appellant's arguments are utterly meritless and have no conceivable chance of success." *Berkson v. Gulevsky*, 362 F.3d 961, 964 (7th Cir. 2004).

This case was complicated by the inartfully drafted contract between plaintiff and the employment agency, on which Fromm based its motion to compel arbitration. The court found Fromm's arguments in support of its motion unpersuasive. But Fromm's arguments

¹ Fromm also moves for a status report on its motion for stay. Dkt. 35.

were not so utterly meritless to render Fromm's appeal frivolous. Accordingly, the court will grant Fromm's motion to stay proceedings in the district court pending appeal.

ORDER

IT IS ORDERED that:

1. Defendant Fromm Family Foods LLC's motion for a stay in the district court proceedings pending appeal, Dkt. 29, is GRANTED.
2. Defendant's motion for a status report on its motion for a stay, Dkt. 35, is DENIED as moot.

Entered October 12, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge